

**Introduced by Senator Burton**

February 19, 1998

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An act to amend Section 883 of the Code of Civil Procedure, and to amend Sections 2401.5, 8480, 9602, and 16441 of the Probate Code, relating to liability.

LEGISLATIVE COUNSEL'S DIGEST

SB 1841, as introduced, Burton. Liability: breach of trust or duty.

Existing law provides that a joint debtor, other than a joint tortfeasor, entitled to compel contribution or repayment in a civil action, may apply for an order determining liability for contribution or repayment at any time before the judgment is satisfied in full or within 10 days thereafter.

This bill would extend that time to within 30 days after the judgment is satisfied in full.

Existing law imposes liability for a breach of trust by a trustee, or a breach of a fiduciary duty by a guardian or conservator or a personal representative. That liability is in the amount of the loss or depreciation to the estate, the loss of profit that would have accrued to the estate, or the profit to the person who breached the trust or duty. However, where that person acted reasonably and in good faith under the circumstances known to the person at the time, the court is authorized to excuse the person, in whole or in part, from liability. Existing law also makes that person liable for interest on the amount for which he or she is held liable.

This bill would authorize the court to excuse the persons described above from liability for the interest where those

persons act reasonably and in good faith under the circumstances known to them at the time.

Existing law requires every person appointed as a personal representative to give a bond conditioned on the faithful execution of the duties of the office. Where 2 or more persons are appointed, the court may require either a separate bond from each or a joint and several bond.

This bill would provide that if a joint bond is furnished, the liability on the bond is joint and several.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 883 of the Code of Civil  
2 Procedure is amended to read:

3 883. (a) A judgment debtor entitled to compel  
4 contribution or repayment pursuant to this chapter may  
5 apply on noticed motion to the court that entered the  
6 judgment for an order determining liability for  
7 contribution or repayment. The application shall be  
8 made at any time before the judgment is satisfied in full  
9 or within ~~40~~ 30 days thereafter.

10 (b) The order determining liability for contribution or  
11 repayment entitles the judgment debtor to the benefit of  
12 the judgment to enforce the liability, including every  
13 remedy that the judgment creditor has against the  
14 persons liable, to the extent of the liability.

15 (c) Nothing in this section limits any other remedy  
16 that a judgment debtor entitled to contribution or  
17 repayment may have.

18 SEC. 2. Section 2401.5 of the Probate Code is  
19 amended to read:

20 2401.5. (a) If the guardian or conservator is liable for  
21 interest pursuant to Section 2401.3, the guardian or  
22 conservator is liable for the greater of the following  
23 amounts:

24 ~~(a)~~

25 (1) The amount of interest that accrues at the legal  
26 rate on judgments.

~~(b)~~

(2) The amount of interest actually received.

*(b) If the guardian or conservator has acted reasonably and in good faith under the circumstances as known to the guardian or conservator, the court, in its discretion, may excuse the guardian or conservator in whole or in part from liability under subdivision (a) if it would be equitable to do so.*

SEC. 3. Section 8480 of the Probate Code is amended to read:

8480. (a) Except as otherwise provided by statute, every person appointed as personal representative shall, before letters are issued, give a bond approved by the court. If two or more persons are appointed, the court may require either a separate bond from each or a joint and several bond. *If a joint bond is furnished, the liability on the bond is joint and several.*

(b) The bond shall be for the benefit of interested persons and shall be conditioned on the personal representative's faithful execution of the duties of the office according to law.

(c) If the person appointed as personal representative fails to give the required bond, letters shall not be issued. If the person appointed as personal representative fails to give a new, additional, or supplemental bond, or to substitute a sufficient surety, under court order, the person may be removed from office.

SEC. 4. Section 9602 of the Probate Code is amended to read:

9602. (a) If the personal representative is liable for interest pursuant to Section 9601, the personal representative is liable for the greater of the following amounts:

~~(a)~~

(1) The amount of interest that accrues at the legal rate on judgments.

~~(b)~~

(2) The amount of interest actually received.

*(b) If the personal representative has acted reasonably and in good faith under the circumstances as*

1 *known to the personal representative, the court, in its*  
2 *discretion, may excuse the personal representative in*  
3 *whole or in part from liability under subdivision (a) if it*  
4 *would be equitable to do so.*

5 SEC. 5. Section 16441 of the Probate Code is amended  
6 to read:

7 16441. (a) If the trustee is liable for interest pursuant  
8 to Section 16440, the trustee is liable for the greater of the  
9 following amounts:

10 ~~(a)~~

11 (1) The amount of interest that accrues at the legal  
12 rate on judgments in effect during the period when the  
13 interest accrued.

14 ~~(b)~~

15 (2) The amount of interest actually received.

16 (b) *If the trustee has acted reasonably and in good*  
17 *faith under the circumstances as known to the trustee, the*  
18 *court, in its discretion, may excuse the trustee in whole or*  
19 *in part from liability under subdivision (a) if it would be*  
20 *equitable to do so.*

